



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MND MNSD FF

### **Introduction**

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit and pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlords' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenant was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

### **Preliminary Issue – Tenant's Late Evidence**

The tenant submitted evidence as part of this application, but this evidence was not sent to the landlords and residential tenancy branch until November 13, 2017 by way of registered mail. The evidence was not received until November 15, 2017. The landlords testified that they did not have the opportunity to review this evidence and respond before this hearing. The landlords did not consent to the admission of this evidence.

Rule 3.15 sets out that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as “at least” or “not less than” a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.15 and the definition of days, the last day for the tenant to file and serve evidence in reply to the landlords’ application was November 13, 2017.

This evidence was not served within the timelines prescribed by rule 3.15 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

This evidence was not served within the timelines prescribed by rule 3.14 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case, the landlords testified that they had not received the tenant’s evidence until a few days before the hearing, and they testified that admitting this late evidence would be prejudicial to them as the landlords did not have the opportunity to review and respond to this evidence before the hearing. The RTB did not receive the tenant’s evidence until November 15, 2017. Furthermore, I find that the tenant did not provide sufficient proof of service to establish that his evidence was served upon the landlords within the timelines prescribed by rule 3.14 of the Rules. On this basis I find that there is undue prejudice to the landlords by admitting the tenant’s evidence. Thus I exercise my discretion to exclude the tenant’s late evidence.

### **Issue(s) to be Decided**

Are the landlords entitled to compensation for damage to the rental unit?

Are the landlords entitled to retain all or a portion of the tenant’s security deposit and pet damage deposit in satisfaction of their monetary claim?

Are the landlords entitled to recover the filing fee from the tenant for this application?

### **Background and Evidence**

This month-to-month tenancy began on August 2, 2014, and ended on June 1, 2016 when the tenant moved out. Monthly rent was set at \$1,700.00. The landlords still hold a \$450.00 security deposit and a \$150.00 pet damage deposit. Both parties confirmed in

the hearing that a move-in and move-out inspection was completed. Both parties confirmed that the tenants provided a forwarding address on May 27, 2017.

The landlords provided the following list of damages for their monetary claim:

<b>Item</b>	<b>Amount</b>
Garage Door Replacement	\$1,302.00
Bathroom Vanity	248.63
Laminate Flooring	2,564.92
Towel Rods and Toilet Paper Holders	141.02
Doors & Frames	627.20
<b>Total Monetary Order Requested</b>	<b>\$4,883.77</b>

The landlords testified that the house was built in 1993, with the carpets in the bedroom and stairway replaced in 2010, and the laminate flooring replaced in 2000. The bathroom vanity was 5-6 years old, as were the towel rods and toilet paper holders. The door and frames are the same age as the home, as is the garage door.

The landlords testified that the garage door contained several holes, which they believed were from the tenant's kids playing hockey. The landlords testified that they were told this by the installer, and the landlord's witness testified that they have witnessed the kids playing hockey against the door. The witness confirmed that they had not actually witnessed the actual damage being made to the garage door. The tenants dispute this claim, stating that the damage to the 24 year old door was pre-existing, and were not caused by them.

The landlords also testified that the bathroom vanity was damaged by the tenants due to the clogging of the toilet with kitty litter. The tenants dispute having caused the water damage to the vanity, and testified that the previous tenants had issues with the toilet as well. The landlords provided in evidence text messages between both parties about the clogged toilet as well as pictures of the vanity.

The landlords testified that the flooring had to be replaced due to the odour left by the tenant's pets. The tenant does not dispute that the pets had caused damage to some of the flooring, but only to the den, and not the laminate portion of the home. The landlords testified that the laminate contained a strong odour of urine, which the tenant states was present before this tenancy had begun. The carpet was replaced in 2010, and the tenants admit to causing damage to 1/3 of the carpet.

The landlords also testified that the tenants had removed the towel rods and toilet paper holders and failed to replace them at the end of the tenancy. The tenants admit to only removing the items in 1/3 bathrooms in the home.

The landlords testified that the doors and frames were damaged due to the tenant's hangers on top of the door. The tenant admitted to using these hangers, which caused damage to the doors and frames, which are the same age as the home.

In support of their monetary claim the landlords provided invoices and receipts, as well as photos

### **Analysis**

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that although the landlords provided evidence to support that the tenant's kids played hockey by the garage door, I find that the landlords failed to provide sufficient evidence to support that the actual damage to the door was caused by the tenant or their kids during this tenancy. On this basis I dismiss the landlords' monetary claim for damage to the garage door.

Similarly I find that although both parties confirm that the toilet clogging was an issue during this tenancy, I find that the landlords failed to provide sufficient evidence that the damage to the vanity was due solely due to the tenant's neglect or actions. On this basis I dismiss this portion of the landlord's monetary claim.

The tenant disputes the landlords' monetary claim for the replacement of the laminate flooring, testifying that they had only caused damage to the den portion of the home. Although there is no dispute that there was damage or urine stains and smells to the flooring, I find that the landlords failed to establish that the tenants had caused damage to the entire home. The tenant admitted to causing damage to 1/3 of the carpeted area, which was replaced in 2000.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the carpet. As per this policy, the useful life of carpets is ten years. The carpet was replaced in 2000, and therefore at the end of the tenancy in 2016, the carpet had exceeded its useful life. Accordingly, I dismiss this portion of the landlords' monetary claim.

The tenant admitted to removing one set of towel rods and toilet paper holders out of three. The landlords testified that the tenant had removed the items from all three bathrooms, which the tenants dispute. Although the landlords did submit photographs, I find that this does not sufficiently support that the tenant had removed all three sets of toilet paper holders and rods. As the tenant did admit to removing one set, I find that the landlords are entitled to one third of their monetary claim of \$141.02. The landlords are granted \$47.00 for the toilet paper holder and rods.

The tenant also admitted that she had hung door hangers on top of the door, which caused damage to the top of the doors and frame. As per section 40 of the *Residential Tenancy Policy Guideline*, the useful life of a door is 20 years. The door and frame date back to the age of the home, built in 1993. Therefore at the end of the tenancy in 2016, the carpet had exceeded its useful life. Accordingly, I dismiss this portion of the landlords' monetary claim.

As the landlords were only successful in part of their claim, I find the landlords are entitled to recover half of the filing fee.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain a portion of the tenant's security and pet damage deposit plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

### **Conclusion**

I issue a monetary Order in the amount of \$503.00 in the tenant's favour under the following terms which allows for the return of the security and pet damage deposits less a monetary award for damage caused by the tenant. The landlords are also authorized to recover \$50.00 for the filing fee.

Item	Amount
Return of Security & Pet Damage Deposits	\$600.00
Towel Rods and Toilet Paper Holders	-47.00

Filing Fee	-50.00
<b>Total Monetary Order</b>	<b>\$503.00</b>

The tenant is provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 3, 2018

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Residential Tenancy Branch